

**LAKE COUNTY BOARD of ADJUSTMENT**  
**January 8, 2014**  
**Lake County Courthouse Large Conference Room (Rm 316)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Sue Laverty, Paul Grinde, Steve Rosso

**STAFF PRESENT:** LaDana Hintz, Robert Costa, Matthew Rohrbach, Lita Fonda

Sue Laverty called the meeting to order at 4:01 pm. Chair and vice chair selections were considered for 2014.

**Motion made by Sue Laverty to appoint Steve Rosso as chair. Motion died for lack of second.**

**Motion made by Steve Rosso, and seconded by Paul Grinde, to appoint Sue Laverty as chair and to appoint Paul Grinde as vice chair. Motion carried, 2 in favor (Paul Grinde, Steve Rosso) and 1 abstention (Sue Laverty).**

For the November 13, 2013 minutes, Steve noted a correction on the first page in the first line of the second paragraph from the bottom, where 'tht' should be 'that'.

**Motion made by Paul Grinde, and seconded by Steve Rosso, to approve the Nov. 13, 2013 meeting minutes. Motion carried, 2 in favor (Paul Grinde, Steve Rosso) and 1 abstention (Sue Laverty).**

**SHARP/ HAWK VARIANCES—UPPER WEST SHORE (4:06 pm)**

LaDana presented the staff memo. (See attachments to minutes in the Jan. 2014 meeting file for staff report.) She gave an update: the Commissioners granted Guy Sharp a lakeshore construction permit approval today. The board could issue a penalty on the actions that occurred if they chose. She recommended not going higher than \$500 if they chose to do so. It should probably be written as a new condition or into the final letter in that case.

Steve recalled reading a justification of some variances based on the existence of similar properties with similar structures. LaDana affirmed. With this property, no matter what the applicant tried to do, he would be in a setback for lake or road. He couldn't do something unless the BOA and the Commissioners granted him variances. If he had initially proposed tearing down and rebuilding the cabin, she thought it would have come out with very similar findings to what she was recommending now.

Steve read a paragraph from the zoning regulations regarding nonconforming structures, and the loss of the right to rebuild under some circumstances. His take on this was the purpose of the zoning was to try to bring the nonconforming properties into conformance over a period of time, as they were destroyed and not replaced.

LaDana thought that was true to some extent. In this case, the applicant would not be able to have a residence if it was denied. Would that be fair for a landowner to have lakefront property and not to be able to have a residence there, when there'd been one there for 80 years? She thought Lake County's stance was no, [that wasn't fair]. He did things for which he should have had approval, but in this case there was no other way to make it conform. When you looked at other properties along the lakeshore, there were instances where yes, they could make their properties conform. In this case, he could not. If the Board said no, he could not have a cabin on there again.

Steve described that he drove along Rollins Lakeshore and looked at cadastral information to see the situation. He found maybe 10 structures that looked like dwellings out of probably 50 properties. Where the road crossed the lots so the piece between the lake and the road was separated, in many cases these weren't separate lots. In 18 cases, and maybe 5 others, those lots were actually separate, like this one. Out of those possible 23 lots, only 3 had dwellings on them. What happened if the rest of the 23 came in to the Board and asked to build where a house hasn't been before? In this case, the same owner with this lot also owned [bigger] lots on the other side of the road that could be built upon. He thought it was important to understand the situation there, and its scope. When the road came in, it either divided lots or created little lots next to the lake. To protect the jewel of the lake, they shouldn't allow a little house 10 feet from the water on those 50 lots. Separating out the emotion from this, it would probably be good for the community if the existing houses were not rebuilt when they fell down.

LaDana explained that in every case, they would look at every situation and the particular facts when someone came in and wanted to do this. A lot of the little lots were created prior to the zoning or the lakeshore regulations. The county would now say they couldn't put a structure on it because they didn't comply with the regulations. [The County] wanted to protect the lake. At the same time, where did that fit with the private property owner rights? Although Guy had an NPI (notice of purchaser's interest) on the property across the street, this lot should be looked at, as its own separate deal; the lots were not tied together.

Steve said he didn't check to see if each of the tiny lots was owned by the same people who owned the adjacent lot across the road, but most were. By allowing this kind of development, was an opportunity created where an owner could sell the lakefront lot and retire on the one behind it? Suddenly the little lot became hugely valuable because the County would allow people to build houses on those.

Sue commented that it seemed irrelevant how many lots an individual or company owned in a particular district or area, because they were individual lots. If you had an individual platted parcel, you could dispose of any of them at any time or transfer them at any time, independent of each other.

Steve said if they granted this [request], they might create a market for these little lots that didn't exist now. If the Board said they weren't going to approve development of those lots, then they didn't risk creating that market.

Sue said this person [already] had a house on it. LaDana said that everyone had the right to ask for a variance. Each one would be looked at on a case by case basis. The Board already approved a lake setback and road setback. The discussion here was if the Board wanted to change the findings from those previously made and the conditions.

Steve said some regulations talked about rebuilding a nonconforming structure based on the percentage of the structure. He couldn't find that in the Upper West Shore regulations. LaDana said they had to remember that this was in the lakeshore protection zoning. The Commissioners granted the approval today to allow Guy to rebuild a nonconforming structure. Essentially, the BOA was granting the lake setback and the road setback. Steve confirmed with LaDana that it was the lakeshore regulations that had the percentages for nonconforming structures.

Sue asked for clarification on why the Board would need to amend the findings. LaDana replied the findings didn't quite represent that someone was taking down a structure and rebuilding it. At that time, it was for extending the walls and adding a roof. She wanted to make the findings consistent with what was actually happening. If the Board didn't want to change the findings, that was fine. They should probably do something, because those weren't quite the activities that occurred. The setback variances were already granted. What they were doing today, was to make sure that the Board approval was consistent with the activities there.

Sue checked if this was a more substantial fix, since when they got into it they found more problems. Why would they modify the first finding A, for instance? LaDana explained that the bolded text was what had been changed. The last staff report with its findings was attached, so finding A as it was written previously could be seen there. She read the original finding A, which talked specifically about raising the roof's height. The project was more than just raising the roof's height. Sue said they did allow that. LaDana said they did allow raising the roof's height, and that was the supporting finding. LaDana and Sue noted this [revised] finding would support a more substantial raising of the roof and walls.

Steve said even if they justified approving these variances based on the fact that there was a minimal amount of construction, the fact that they did approve the variances, it didn't matter how much construction there really was. LaDana said they weren't looking at the amount of construction. They looked at that because the applicant submitted a plan of what he intended to do. If they'd had a plan before he did the work, staff would have come to the Board and done the same process, where they would say they'd tweaked the plan and asked if it was still in line with what the Board was thinking. Steve said the difference was that if [the Board] had done that in the beginning, the applicant would have said they were replacing all of the walls, the roof and some of the flooring. The Board, or some of it, might have felt this was building a whole new house, and maybe that wouldn't have gotten approved. LaDana said when she looked back at it, the findings were very similar to what was there previously. That was why she thought they would have had the same outcome.

Guy Sharp spoke about his application and project. Other than what was in the letter, the situation was embarrassing. He apologized for the way things turned out. What they had there is exactly what they planned, but with a lot more new wood in the walls than originally planned. Steve asked what the applicants would have done if the variance wasn't approved. Guy replied they would not have stayed in the original cabin. They did have a cabin on the property behind the road. They stayed in that one until this one was ready. Steve checked that they could enlarge the other cabin. LaDana observed the other cabin was also nonconforming with issues, and he would be before the Board. Guy added they were happy with the way it was. They had extended family using the property. When this cabin was done, it would be their residence of choice. The other family members would use the other cabin. Had they been unable to remodel [this one], he himself would not stay in it. They'd let the kids use it, which was what happened last summer. He kept hitting his head on the ceiling. Steve asked if they might have abandoned it or torn it down, given the rotting wood. Guy thought they would have tried to patch it together. The carpenter determined they needed to move the wall off of that portion of floor to repair the foundation. They felt it was unwise to leave a rotted foundation while replacing the roof.

Steve asked hypothetically if when Guy was enjoying the lake and neighborhood, how would he and his wife feel if, given about 50 lots that might have little homes down by the water, people started building those little homes. Would they feel this was a good thing or would they be disappointed that the community was changing, with a lot of little homes around that bay and Shelter Bay, with homes within 5 or 10 feet of the water? Guy said they wouldn't want to see that.

Guy said they got a variance to reconstruct an existing cabin. He checked that it was a minor variance. If someone wanted to build a new house, would that also be considered a minor variance? LaDana said it could be; it might be a major variance. In Guy's case, he was putting a cabin back right where one was. It had the same impact or maybe a little less impact because stormwater management was required, which he hadn't had before, and the septic was being looked at, and so forth. Maybe that was the difference between allowing those others as Steve was suggesting. Maybe those would be major variances because there was never something there. That would be a lakeshore variance. In the zoning, the variances weren't minor or major. Within 20 feet [of the lake] it was a minor variance, based on this circumstance with the cabin existing.

*Public comment opened:* Guy reported the neighbors said they liked it. *Public comment closed.*

Paul saw no issue. When someone remodeled an 80-year old structure, you could almost bet something would be [found to be] different than what you thought. He understood where the applicant was at. He understood where Steve was coming from. In his mind, fixing an existing structure was a whole different ballgame than coming before the Planning department and asking to build a new house on one of these tiny lots. He would

treat it differently. Sue said she would, too. Paul didn't think all of those lots needed to be built upon.

Steve said his concern wasn't that they said okay to building a new house on a lot. He was concerned that someone would interpret it that way, even though they hadn't said that. They justified this because the applicants were replacing a structure that was there before. The applicants were repairing/remodeling/improving this old rotted 80-year old construction. When it got to a point where all the walls, the roof and some of the flooring had to be replaced, someone was likely to come to the Board and argue that they ought to be able to build a new house on a similar little lot because this other project for 95% [replacement] was okayed. Sue thought they'd have to take that on an individual basis that was open and objective. Putting a new structure in place of an existing structure was totally different than putting a new structure where there never was a structure. Sue referred to LaDana's point that now there's stormwater management. There was no increase in impervious surface. She thought the new structure might be improved as far as not allowing seepage or debris into the lake.

Paul asked what a motion might need to contain. LaDana pointed to the amendment to the findings, and the conditions. For instance, condition #10 was changed regarding Environmental Health, and #2 regarding the work. Robert summarized it was a motion to amend. LaDana mentioned it was the Board's decision whether or not to assess a penalty. Sue thought a penalty was needed. Steve asked about the penalty fees mentioned as paid in the staff report. LaDana clarified those were on the lakeshore construction permit. The Board could determine what was reasonable for the zoning. LaDana, Steve and Guy discussed further details on the permitting, fees, fines and what had been paid. Sue proposed that the Board request a \$500 penalty. Would this be another condition? LaDana they wouldn't necessarily want that to show up on the permit. As part of the motion, the Board could say they were assessing the penalty and staff would write that in.

**Motion made by Sue Laverty to amend the original findings of fact and approval along with the conditions, with the changes here, and to impose a \$500 penalty.**

Paul was fine with the amendments. He put forward the idea that \$500 was a lot of money for what the applicant was going to do all along.

Steve thought that the monetary penalty wasn't hugely important to him. For him, it was important to get what he'd said in the record. As a board member, he was going to be careful with what kind of precedents they were setting. When the zoning regulations talked about trying to get rid of nonconforming structures through attrition, it wouldn't happen if they always approved fixing old structures. He thought the reason these paragraphs were in the regulations was so at some point in the future, you could look at the district and say everything was conforming or had a legitimate variance based on the structure itself, not how old the structure was or whether it was 'grandfathered' or those kinds of things. The wording suggested to him that the idea was to get rid of

nonconforming structures through attrition over a period of time. That was important to him to keep in mind in the future.

Sue said that just as important to her, was the penalty. There were other places where if you make a mistake, you paid dearly for it. Here, no one really did. She thought the more bite there was to it, it was fair. She thought the \$500 penalty was fair. This was a new structure, even though it was on the same footprint.

Steve mentioned he could have stopped and gone to the County for the proper approvals first. Paul said he would compromise.

**Motion seconded by Paul Grinde. Motion carried, all in favor.**

Guy noted he had no problem paying the penalty. He made a mistake and would do what he needed to make it right. Sue suggested he could be a good advocate to let people know to check before they do something outside their permit because it could cost in the long run.

**DICELLO CONDITIONAL USE—SWAN SITES (4:53)**

Robert Costa presented the staff report. (See attachments to minutes in the January 2014 meeting file for staff report.)

Sue checked with Robert about what portion of the lot the floodplain encompassed. Robert explained that when FEMA came out with an approximate floodplain, it was shown to cover the majority of the property. The applicant had an engineer locate the base flood elevation on the property and compare it against the actual contours. This showed the approximate zone A was wrong. It moved from the majority of the property to an extreme minority on the property. This was certified by the engineer and approved by Joel, who at that time was the floodplain administrator.

Steve described a dashed line and writing on the map. Robert said that was the exact floodplain that they delineated. Steve confirmed with Robert that this involved both lots rather than just the crosshatched lot. Robert noted that the way the data came from the state, it split those lots. That line was not true; the lots were tied.

Steve asked on what kind of surface the RV would be parked. Robert didn't think the applicants wanted an RV pad. Steve said it would be a lot easier to make sure this was temporary if they didn't pour a pad. He wasn't sure if the Board wanted to add a condition that there shouldn't be a permanent kind of impervious surface. LaDana said he could store [the RV] on the pad. Steve thought it was part of not developing the RV site. As a permanent site for occupation of the RV, not only would that entail a pad, but a permanent electrical box to plug it into, a permanent fixture for the septic outflow and a water supply. They couldn't do that in a permanent manner that would tempt them to leave it.

Robert said that the approval for the use of the RV was worded such that it would sunset. He pointed to condition #1 on pg. 18 and read from the sunset portion. Sue observed condition #3 also mentioned occupancy of a temporary dwelling. Steve wanted to make sure that this wasn't an issue, where it would naturally sunset instead of having to be enforced. For these temporary things, it was nice to make sure that it wasn't easier for them to make it permanent than it was for them to tear it out. Sue said they could build a garage or parking pad for the RV or cover it after the home was built, although they couldn't hook it up permanently. She thought this covered it.

The applicant was not present to comment.

*Public comment:* No one was present to comment. *Closed.*

Paul thought that after a few years in an RV, the applicants would be tickled to get out of there.

Robert added that condition #15 on pg. 19 included language to allow Planning staff to grant one extension for another 2 years. LaDana said that this was so the applicants didn't have to come back to the board. If the project wasn't done in that [extended] period, it would definitely be sent back to the Board. Robert said [the condition] was written to say that.

**Motion made by Steve Rosso, and seconded by Paul Grinde, to approve the conditional use request with findings of facts and staff recommendations. Motion carried, all in favor.**

**OTHER BUSINESS (5:05)**

LaDana introduced Matthew Rohrbach, the new planner. Matthew gave a brief description of his background. LaDana mentioned her appointment to Planning Director. The Board greeted Matthew and congratulated LaDana. Staffing, projects and handouts were briefly touched upon.

**Sue Lavery, chair, adjourned the meeting at 5:14 pm.**